IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

WILLIAM ROBERT BILL,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	CIVIL ACTION NO. 05-154
	)	
TROOPER VICTOR J. STERNBY	)	JURY TRIAL DEMANDED
	)	
Defendant.	)	

DEFENDANT'S ANSWER TO COMPLAINT

AND NOW, comes the defendant, Trooper Victor J. Sternby, by his attorneys, Thomas W. Corbett, Jr., Attorney General, Mary Lynch Friedline, Senior Deputy Attorney General, and Susan J. Forney, Chief Deputy Attorney General, Chief, Litigation Section, and hereby files the following answer to plaintiff's complaint:

FIRST AFFIRMATIVE DEFENSE

Defendant responds to plaintiff's factual allegations as follows:

1. Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 1.

2. This paragraph is directed to the Department of State Police, which the Court dismissed from this case in its August 24, 2005 ruling granting the Department's Motion to Dismiss.

3, 4 and 5. The averments contained in paragraphs 3, 4 and 5 are directed to Colonel Jeffrey B. Miller. In its August 24, 2005 ruling, the Court agreed to dismiss Miller unless plaintiff amended his claims against Miller within ten days. No amendment was filed and therefore, Miller is no longer a party to the case.

6. Admitted.

7. All claims against defendant Sternby in his official capacity were dismissed by this Court in its August 24, 2005 ruling on defendant's Motion to Dismiss. It is admitted that plaintiff's remaining claims are asserted against defendant Sternby in his individual capacity.

8 - 9. The averments of paragraph 8 and 9 are conclusions of law to which no response is necessary.

10. Defendant incorporates his answers to paragraphs 1 through 9 of the complaint as though fully set forth.

11. Denied as stated. On February 22, 2003 defendant and his partner were sent to investigate a vehicle stuck in a snow drift. When they arrived at the scene, they found a blue pick-up truck off the road in a snow drift, with plaintiff and a passenger asleep in the front seat. It is admitted that defendant approached the driver's side, and had to wake up plaintiff.

12. Denied as stated. Based upon his interaction with plaintiff and unsuccessful attempts to administer field sobriety tests, Trooper Sternby had reason to believe that Bill was intoxicated. The precise level of Bill's intoxication was not known until much later, when his blood alcohol test results were obtained.

13. Admitted, except that the statute provision at issue was 75 Pa.C.S. § 3731.

14, 15 and 16. The averments of paragraphs 14, 15 and 16 are denied. By way of further response, defendant took appropriate steps to investigate a potential DUI violation, which included requiring Bill to exit his vehicle and attempting to administer field sobriety tests. During the course of the investigation, defendant at all times exercised reasonable care and caution for the safety of plaintiff and the public. Based upon his observations of plaintiff, Trooper Sternby had no reason to expect, as he turned away to obtain a testing device from the patrol car, that plaintiff would suddenly collapse to the ground. By way of further response, defendant incorporates herein his answer to paragraph 12 of the complaint.

17 – 18. Denied. By way of further response, defendant incorporates herein his answers to paragraphs 12, 14, 15 and 16 of the complaint.

19. Denied. Defendant at all times acted with reasonable care for Bill's safety, and immediately upon seeing Bill fall, administered appropriate first aid and called for medical assistance.

20, 21, and 22. Denied as stated. By way of further response, defendant incorporates herein his answers to paragraphs 12, 14, 15, 16 and 19 of the complaint. In addition, plaintiff's claims under the Fourth and Eighth Amendments were dismissed by the Court in its August 24, 2005 ruling.

23. The averments contained in paragraph 23 are directed to the Pennsylvania State Police and/or to Colonel Jeffrey B. Miller, who were dismissed from the case as stated in defendant's answer to paragraphs 2 and 3, which are incorporated herein by reference. To the extent that a response is required as to defendant Sternby, paragraph 23 is denied.

24. Denied.

25. The averments contained in paragraph 25 are directed to the Pennsylvania State Police and/or to Colonel Jeffrey B. Miller, who were dismissed from the case as stated in defendant's answer to paragraphs 2 and 3, which are incorporated herein by reference. To the extent that a response is required as to defendant Sternby, paragraph 25 is denied.

26, 27 and 28. The averments of paragraphs 26, 27 and 28 are conclusions of law to which no response is necessary. In addition, plaintiff's claims under the Eighth Amendment and the Pennsylvania Constitution were dismissed by the Court in its August 24, 2005 ruling.

29. Denied.

30. Denied.

31. Denied.

32. Denied. In addition, plaintiff's claims under the Pennsylvania Constitution were dismissed by the Court in its August 24, 2005 ruling.

33. Denied.

34. Denied.

35. Denied.

COUNT I – FOURTH AND EIGHTH AMENDMENT

36. Defendant incorporates herein by reference his answers to paragraphs 1 through 35 as though fully set forth.

37. The averments of paragraph 37 are conclusions of law to which no response is necessary.

38 - 45. Denied.

46. Denied. In addition, plaintiff's Fourth Amendment claims were dismissed by the Court in its August 24, 2005 ruling.

COUNT II – EIGHTH AMENDMENT

47, 48 and 49. Plaintiff's Eighth Amendment claims were dismissed by the Court in its August 24, 2005 ruling. By way of further response, it is denied that defendant at any time acted with deliberate indifference toward Bill.

COUNT III – PENNSYLVANIA CONSTITUTION

50, 51, and 52. Plaintiff's claims under the Pennsylvania Constitution were dismissed by the Court in its August 24, 2005 ruling. By way of further response, it is denied that defendant at any time acted with deliberate indifference toward Bill.

WHEREFORE, defendant requests judgment in his favor and against plaintiff.

SECOND AFFIRMATIVE DEFENSE

Plaintiff has failed to state a claim upon which relief can be granted.

THIRD AFFIRMATIVE DEFENSE

At no time did the defendant deprive the plaintiff of any rights, privileges, or immunities secured to him by the Constitution or laws of the United States.

FOURTH AFFIRMATIVE DEFENSE

Defendant was at all times acting in good faith, in an objectively reasonable manner and with a reasonable belief in the lawfulness of its actions.

FIFTH AFFIRMATIVE DEFENSE

Any injuries or losses suffered by the plaintiff were the direct result of his own conduct, condition, actions or omissions, or were caused by the conduct or actions of third parties over whom the defendant has no control or responsibility.

SIXTH AFFIRMATIVE DEFENSE

Defendant's actions were justified and performed in the course of a lawful investigation and arrest under Pennsylvania law. The defendant was at all times acting pursuant to a duty required or authorized by statute or regulation, and his acts were within the discretion granted to him by statute or statutorily authorized regulations.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the statute of limitations.

EIGHTH AFFIRMATIVE DEFENSE

Defendant is entitled to qualified immunity.

NINTH AFFIRMATIVE DEFENSE

Plaintiff is not entitled to punitive damages.

TENTH AFFIRMATIVE DEFENSE

Defendant at all times exercised reasonable care and concern for plaintiff's safety.

WHEREFORE, defendant requests judgment in his favor and against plaintiff.

Respectfully submitted:

Thomas W. Corbett, Jr.
Attorney General

By: /s/ Mary Lynch Friedline
MARY LYNCH FRIEDLINE
Senior Deputy Attorney General
Attorney I.D. No. 47046
Susan J. Forney
Chief Deputy Attorney General
Litigation Section

Office of Attorney General
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Pittsburgh, PA 15219
October 14, 2005

CERTIFICATE OF SERVICE

I hereby certify that on October 14, 2005, I electronically filed the foregoing ***Defendants Answer to Complaint*** with the Clerk of Court using the CM/ECF system. And I hereby certify that I have mailed the foregoing document by United States Postal Service to the following non CM/ECF participants:

Steven C. Feinstein, Esq.
Kane & Silverman
2401 Pennsylvania Avenue
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Philadelphia, PA 19130

By: /s/ Mary Lynch Friedline
MARY LYNCH FRIEDLINE
Senior Deputy Attorney General